

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Memphis in May International Festival, Inc.)	
	Ward 12, Block 40, Parcel 11C)	Shelby County
	<i>Exemption</i>)	

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal from a denial of an application for exemption of the subject property from ad valorem taxation. The application was filed with the State Board of Equalization (the “State Board”) on October 27, 2003. By letter dated March 11, 2004, former State Board staff attorney Rachele Scott notified the applicant as follows:

It appears from the organization’s charter that the principal purpose is to promote the commercial interests and general welfare of the city of Memphis and Shelby County. Even though the organizational [sic] may engage in some charitable or educational uses, the main purpose is to promote the city and county....The organization is not purely used for charitable purposes, and thus not eligible for exemption.

Memphis in May International Festival, Inc. (“MIM”), the applicant, timely appealed the staff attorney’s initial determination to the State Board pursuant to Tenn. Code Ann. section 67-5-212(b)(2). The undersigned administrative judge conducted a hearing of this matter on May 19, 2005 in Memphis.¹ MIM was represented by John B. Burns, Esq., of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC (Memphis). Staff appraiser Tom Richie appeared on behalf of the Shelby County Assessor of Property.

Findings of Fact and Conclusions of Law

Background. MIM, a “501(c)(3)” organization founded in 1973 and incorporated five years later, is an offshoot of the local chamber of commerce. As the corporate name suggests, MIM is best known for a series of weekend festivals it stages in downtown Memphis each year during the month of May. In counsel’s view, these high-profile events – most notably the Beale Street Music Festival – have “overshadowed” MIM’s “primary focus” on education.

The purposes of MIM are described in Article V of its Restated Charter as follows:

- A. To provide the citizens of Memphis, Shelby County, Tennessee, and the tourists to the City of Memphis with recreational, educational, and cultural events and activities.
- B. To provide the means, equipment, and facilities to afford artists, musicians, actors, and composers a medium through

¹At the request of the appellant and without objection by the Shelby County Property Assessor’s representative, the administrative judge agreed to hold the matter in abeyance until November 30, 2005.

which their talents may be produced and presented to the general public.

- C. To assist cultural, educational and recreational associations in the City of Memphis in promoting their performances and/or other activities.
- D. To assist the public and private schools, in Memphis and Shelby County in providing educational material promoting and developing and understanding and appreciation of foreign cultures.
- E. To promote a means and the opportunity for the education of the general public to understand and appreciate foreign cultures.
- F. To promote the City of Memphis to foreign countries, their countrymen and their businesses.

Presently, MIM's headquarters are located at 88 Union in Memphis. The affairs of the corporation are governed by an all-volunteer, 19-member Board of Directors that includes the mayors of the City of Memphis and Shelby County (or their designees). Bylaws, Article III, section 3. In addition to president/executive director James L. Holt, MIM employs about a dozen full-time employees who perform various production, marketing, administrative, and accounting functions.

The bulk of MIM's multi-million-dollar budget is devoted to the presentation of four signature events: the aforementioned Beale Street Music Festival, which features artists associated with the Bluff City's renowned musical heritage as well as national touring acts; the "Desti-Nations" International Family Festival; the World Championship Barbecue Cooking Contest; and the Great Southern Food Festival & Sunset Symphony. MIM's revenue is derived mainly from the attendant admission fees, concessions, merchandise sales, and entry fees.² The combined economic impact of these events on the Memphis area is estimated to be upwards of \$35,000,000. Collectively marketed as Memphis in May, the popular festivals are trumpeted in the appellant's promotional materials as "a boom" and "the retail rallying cry kicking off a thriving tourism market."

Yet, according to Mr. Holt's testimony, MIM spends a "disproportionate" amount of its time on an "extensive" educational program which revolves around a country selected each year by the organization.³ The centerpiece of this program is a "Curriculum Guide" that is designed to acquaint students of local public, private, and parochial schools with the history, government, and economy of the honored country. MIM distributes this publication every year to schoolteachers free of charge. MIM also sponsors a student exchange program that enables 12-14 schoolchildren to visit the honored country and, in return, gives students there the opportunity to attend classes and experience Memphis area attractions for up to two weeks. Among MIM's other year-round activities are student poster contests; visiting artists' exhibitions; and adult education programs.

²Until the fiscal year ended July 31, 2001, MIM received relatively modest funding from Memphis and Shelby County; but the organization no longer applies for government grants.

³Each of MIM's festivals in some way pays tribute to the chosen country, such as by playing its national anthem.

MIM's educational program has earned recognition for its excellence from the International Festivals & Events Association (IFEA). Exhibit #15.

Former federal prosecutor John Fowlkes, who in his present capacity as Shelby County's chief administrative officer serves as its representative on MIM's Board of Directors, spoke eloquently of the importance he placed on the exposure of inner-city children to foreign countries and cultures.⁴ Like Mr. Holt, he lamented the scant media coverage on this facet of the organization's activities.

The Subject Property. The subject property consists of an approximately 16,500-square-foot warehouse on West Desoto Avenue in Memphis. In need of additional space for the storage of equipment used at its festivals (e.g., chairs; fences; signs; trash receptacles), MIM purchased this property on September 16, 2003 for \$350,000. The facility also contains a wood shop (for building sets), and serves as a shipping/receiving center.

The Appellant's Position. Relying heavily on Youth Programs, Inc. v. State Board of Equalization, 170 S.W.3d 92 (Tenn. Ct. App. 2004), MIM claims exemption of the subject property as a "charitable institution" within the meaning of Tenn. Code Ann. section 67-5-212.⁵

Applicable Law. Article II, section 28 of the Tennessee Constitution states that "all property real, personal or mixed shall be subject to taxation, but the Legislature may except...such as may be held and used for purposes purely religious, charitable, scientific, literary or educational...." Under this authority, the General Assembly has decreed that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, charitable, scientific or nonprofit educational institution which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists....

Tenn. Code Ann. section 67-5-212(a)(1)(A).

The legislature further provided, however, that:

The real property of any such institution not so used exclusively for carrying out thereupon one (1) or more of such purposes, but leased or otherwise used for other purposes, **whether the income received therefrom be used for one (1) or more of such purposes or not**, shall not be exempt...[Emphasis added.]

⁴Mr. Fowlkes doubted that MIM would qualify as a charitable institution if its activities were limited to the production of festivals.

⁵At the hearing, MIM also contended that the subject property was exemptible under the provisions of Tenn. Code Ann. section 67-5-223 (relative to nonprofit community and performing arts organizations). However, in a letter to the administrative judge dated December 1, 2005, Mr. Burns indicated that MIM had elected not to pursue the approval by the county governing body (the Shelby County Commission) on which exemption of property under that section is expressly conditioned.

For property tax exemption purposes, the term *charitable institution* is defined in Tenn. Code Ann. section 67-5-212(c) to include “any nonprofit organization or association devoting its efforts and property, or any portion thereof, exclusively to the improvement of human rights and/or conditions in the community.” As used in section 67-5-212(a)(1)(A), the phrase *purely and exclusively* has been construed to mean that the property in question must be put to a use which is “directly incidental to or an integral part of” an exempt purpose of the institution. Methodist Hospitals of Memphis v. Assessment Appeals Commission, 669 S.W.2d 305 at 307 (Tenn. 1984).

During its 1998 session, the General Assembly passed a law concerning exemption of property owned by “nonprofit community and performing arts organizations.” A copy of that law (Tenn. Code Ann. section 67-5-223) is appended to this initial order.

In this state, contrary to most other jurisdictions, property tax exemptions are liberally construed in favor of religious, charitable, scientific, and educational institutions. See, e.g., George Peabody College for Teachers v. State Board of Equalization, 407 S.W.2d 443 (Tenn. 1966). But as the party appealing from the initial determination on its application for exemption, Memphis in May has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

Analysis. Although it does not seek exemption of the subject property under Tenn. Code Ann. section 67-5-223, MIM does characterize itself as a “nonprofit community organization” within the purview of that section. Position Statement, p. 5. Arguably, in enacting a law dealing specifically with exemption of property owned by “nonprofit community and performing arts organizations,” the legislature signaled its intent to exempt such property *only if* the owning institution meets all of the requirements enumerated in the statute. Under this interpretation, the appellant’s warehouse would not be exemptible without the approval of the local governing body (i.e., the Shelby County Commission) pursuant to section 67-5-223(c).

Even apart from this consideration, the administrative judge is not persuaded that MIM qualifies for exemption of the subject property under the general provisions of Tenn. Code Ann. section 67-5-212. To be sure, this property is used in furtherance of the corporation’s stated purposes. But while MIM may sincerely believe that education is its most important mission, the appellant’s personnel and resources appear to be directed mainly toward marketing and promoting a series of ticketed events for the entertainment of the general public. Indeed, these festivals are the very lifeblood of the organization, accounting for most of its revenues as well as expenditures. Though undoubtedly enjoyable and beneficial to the Memphis economy, these predominantly music-and-food-oriented celebrations are not charitable undertakings. An institution does not dispense charity by affording professional entertainers and cooks the opportunity to showcase their talents to paying customers, or by affording corporate sponsors the opportunity to advertise their products and services to a huge audience. Nor, of course, are

the festivals themselves “educational” activities merely because they may shed some light on the culture of a foreign country.

In Youth Programs, Inc. v. State Board of Equalization, *supra*, the Tennessee Court of Appeals held that a “501(c)(3)” organization was entitled to exemption of land used not more than one month a year as a staging/parking area for a golf tournament to raise funds for St. Jude’s Children’s Research Hospital in Memphis. MIM contends that it is a no less charitable institution by virtue of the annual outlay of some \$275,000 (about 5% of total revenues) for its acclaimed educational program. Respectfully, the administrative judge disagrees. Youth Programs involved a nonprofit corporation whose only purported objective was to raise funds for other charitable organizations. Thus in the court’s mind, apparently, the annual professional (PGA) golf tournament conducted by Youth Programs was merely a means of accomplishing that end. MIM, on the other hand, exists largely for the very purpose of staging “events and activities” that will attract both Memphis-area residents and tourists – not primarily for the benefit of a charity, but of the city’s economy. Indeed, promotion of the city of Memphis is listed among the corporate purposes in MIM’s charter.

The administrative judge certainly does not mean to give short shrift to MIM’s educational contributions. However, those commendable efforts must be kept in perspective. By any objective measure, fostering appreciation of cultural differences is secondary to MIM’s goal of capitalizing on Memphis’s rich musical and culinary traditions to enhance its economic growth. In this respect, MIM is not unlike the chamber of commerce which unsuccessfully sought exemption of its building in Memphis Chamber of Commerce v. City of Memphis, 232 S.W. 73 (Tenn. 1921). The Court explained that:

The mere fact that (the corporation) administers to charity, or may give instructions of an educational nature along certain lines, does not render it an educational or charitable institution in the sense of our Constitution and statute exempting the property of such institutions from taxation.

Id. at 74. See also Convention & Visitors Bureau of Memphis (Shelby County, Initial Decision and Order, July 26, 1993).

Order

It is, therefore, ORDERED that the initial determination of the State Board’s staff attorney be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within**

thirty (30) days from the date the initial decision is sent.” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

- 2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 13th day of January, 2006.

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: John B. Burns, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz
Tom Richie, Shelby County Assessor's Office Exemption Department
Rita Clark, Assessor of Property